

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
LAWRENCE J. MILLWARD,)
MRS. HARVEY EACRETT, ROBERT I.)
CUMMINGS, GIL BARTLETT, EARL &)
LUCY STEVENS, ANDY ROMANO)
ROMASANTO, JOHN T. MANSFIELD,)
RUNAR JOHNSON, CORA PRIEST,)
M.A. & P.A. GRAHAM, JAMES P. &)
CATHERINE C. MALVEY, STEVEN M.)
LEUTHOLD, FLORENCE CLASSEN,)
ROBERT E. LOBSIGER, CAROL D.)
READER, LOU OSTERBAUER,)
G. SHARKEY, BESSIE ADAMS,)
DELANE R. BELL, ROBERT BAGLEY,)
LAURA ALDUNATE, DALE R. BARRELL,)
JAMES LAMB, and FRIENDS OF THE)
DITCH,)
Appellants,)
v.)
STATE OF WASHINGTON,)
DEPARTMENT OF ECOLOGY, and)
K.G.D.T., INC.,)
Respondents.)

PCHB Nos. 83-80, 83-82,
83-83, 83-84, 83-85,
83-90, 83-93, 83-94,
83-97, 83-98, 83-102,
83-104, 83-106, 83-108
83-111, 83-113, 83-114
83-116, 83-118, 83-120
83-121, 83-127, 83-128,
and 83-129

FINAL FINDINGS OF FACT
CONCLUSIONS OF LAW AND
ORDER

AND

1 IN THE MATTER OF)
2 LAWRENCE J. MILLWARD, ANDY)
3 ROMANO ROMASANTO, JOHN T.)
4 MANSFIELD, RUNAR JOHNSON,)
5 CORA PRIEST, M. A. & P. A.)
6 GRAHAM, JAMES P. & CATHERINE C.)
7 MALVEY, MARY A. LAKE-LEUTHOLD,)
8 FLORENCE CLASSEN, ROBERT)
9 LOBSIGER, CAROL D. READER,)
10 LOU OSTERBAUER, BESSIE ADAMS,)
11 DELANE R. BELL, LAURA ALDUNATE,)
12 W. P. HOBSON, MRS. HARVEY)
13 EACRETT, DALE R. BARRELL, and)
14 FRIENDS OF THE DITCH,)

Appellants,)

v.)

11 STATE OF WASHINGTON,)
12 DEPARTMENT OF ECOLOGY, and)
13 HIGHLAND HILLS DEVELOPMENT,)

Respondents.)

PCHB Nos. 83-81, 83-89,
83-92, 83-95, 83-96,
83-99, 83-101, 83-105,
83-107, 83-109, 83-110,
83-112, 83-119, 83-122,
83-123, 83-124, 83-126,
and 83-130

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

15 This matter, the appeals of two Department of Ecology Reports of
16 Examination recommending permits for ground water withdrawal in a
17 portion of the Sequim-Dungeness Valley, came on for hearing before the
18 Pollution Control Hearings Board on November 21 and 22, 1983, at
19 Sequim, Washington. Seated for the Board was Lawrence J. Paulk and
20 Gayle Rothrock, presiding. The proceedings were electronically
21 recorded and officially reported by Nancy J. Swenson and Kim L. Otis.

22 Michael Graham of Friends of the Ditch was spokesman for the
23 several appellants. Charles K. Douthwaite, Assistant Attorney
24 General, represented the Department of Ecology.

25 Witnesses were sworn and testified. Exhibits were admitted and

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB Nos. 83-80, et al.
PCHB Nos. 83-81, et al.

1 examined and oral argument was heard. From the testimony, evidence
2 and argument, the Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent permittees K.G.D.T., Inc., and Highland Hills
6 Development Company, now joined under one ownership, do business in
7 the vicinity of Sequim. K.G.D.T., Inc., owns wells in Loma Vista, and
8 Highland Hills Development owns wells in Bell Hill and Happy Valley.
9 They are land development firms involved in water purveying.
10 Appellants are residents of the areas generally known as Bell Hill,
11 Happy Valley, and Loma Vista.

12 II

13 The Sequim-Dungeness Valley historically has been an agricultural
14 and recreational area dotted with farms and towns and serpentined with
15 irrigation ditches. Water comes from the ocean, creeks and a river,
16 ground water, and the ditches. Recent land use changes and proposals
17 for future development would eventually give the area more residential
18 character and cover more land surface. Most current and future
19 planned domestic water use is from well water. Most sewage drainage
20 and disposal is handled through on-site domestic systems.

21 III

22 The surface sediments in the flats and valleys of the Sequim area
23 are mostly unconsolidated glacial, alluvial, and glaciomarine
24 deposits. Mudstones, siltstones and some sandstones are exposed at
25 Bell Hill and probably underlie the deposits in the lower elevations.

6 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB Nos. 83-80, et al.
PCHB Nos. 83-81, et al.

1 Three aquifers and two confining beds have definitely been
2 identified under the valley. The water table aquifer and the second
3 aquifer are separated by a clay layer down 96 to 115 feet in depth.
4 The aquifers are composed of sand and gravel with some till, silt, and
5 clay. In the upper regions, where it directly overlies bedrock, the
6 water table is characterized by till and clay with minor amounts of
7 sand and gravel.

8 IV

9 The valley surface is penetrated by at least 7,000 domestic
10 shallow wells and some number of deeper wells which reach into the
11 second aquifer. No one has any idea how many shallow wells, over and
12 above the 7,000, actually exist. It is merely accepted that the area
13 is very densely penetrated with wells.

14 Many residents also draw water from points along the irrigation
15 ditch system, which ditches are partially fed by run-off from hills.
16 It is undetermined whether the ditch water meets drinking water
17 standards. In addition to rainwater, water in the irrigation ditch
18 system is a significant contributor to ground water recharge in the
19 area.

20 Noticeable lowering of the static water levels of shallow wells
21 has been experienced periodically during the last decade. One
22 drawdown during a 1979 Department of Ecology supervised pump test in
23 Loma Vista occurred because a pump was rotating in reverse, but other
24 reported drawdown experiences have not been attributed to human error.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB Nos. 83-80, et al.
PCHB Nos. 83-81, et al.

V

As part of an effort to develop more homesites in certain areas between the Dungeness River and the east lines of both Sections 28 and 33, Township 30 North, Range 3 W.W.M. and Section 4, Township 29 North, Range 3 W.W.M. and between U. S. Highway 101 and the Bonneville Power Administration transmission line corridor, two applications for water permits were made with the Department of Ecology in mid-July, 1982. This area is something less than 6,000 acres. Highland Hills Development Company was assigned number G2-26200 and K.G.D.T., Inc., was assigned number G2-26196.

Each application requested water for community domestic supply and they had handwritten corrections by a DOE official regarding the number of services, the totality of the proposed service area, the rate of flow, and existing wells. Each application was judged to be an exempt action under the State Environmental Policy Act, and so marked, since the withdrawals applied for are clearly less than the 10 cubic feet per second flow standard.

VI

In response to application G2-26196 protests were filed. Some of those complaints were investigated by the Department as they were in 1979 when these area well water application was filed. Existing water rights records were checked and a field examination was made. Since the applicant's agent for both ground water withdrawal requests was the same individual and that agent/owner indicated the two applications were filed in preparation for an intertied regional

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB Nos. 83-80, et al.
PCHB Nos. 83-81, et al.

1 system, the Department handled much of the investigation and analysis
2 of the subject applications simultaneously.

3 During the application review period a Department official also
4 had some contact with a U.S.G.S. water resources investigator and his
5 early draft notes for a report eventually issued entitled, "Impact of
6 Changes in Land Use on the Ground-Water System in the Sequim-Dungeness
7 Peninsula, Clallam County, Washington." The Department official did
8 not have the benefit of the final report for the review and
9 investigations of these applications.

10 The data gathered did indicate the water table aquifer was indeed
11 receding due to reduced irrigation in the area and conservation
12 practices which resulted in a reduction of surplus irrigation water to
13 the water table aquifer. There is no determined water budget for this
14 area.

15 Reports of Examination recommending issuance of permits for ground
16 water withdrawal under G2-26196 and G2-26200 were issued by the
17 Department of Ecology on May 26, 1983. Appeals of these Reports were
18 first received by the Pollution Control Hearings Board on June 16,
19 1983.

20 VII

21 The K.G.D.T., Inc., Report of Examination points to the
22 applicant's plans to drill one new well in Loma Vista to complement
23 its existing rights and/or permits to withdraw ground water from two
24 existing wells in the amount of 100 gallons per minute and 80
25 acre-feet per year to serve 160 water users in the Loma Vists area.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB Nos. 83-80, et al.
PCHB Nos. 83-81, et al.

The Highland Hills Development Company Report of Examination indicates plans to withdraw from one new well near the west quarter corner of Section 32 to complement the company's existing rights to withdraw ground water from the Haller well at 50 gallons per minute and 75 acre-feet per year to serve 75 large lots on the westerly and northerly flanks of Bell Hill.

Both Reports of Examination accept the applicant agent/owner's expressed interest in an intertied system in recommending an overall instantaneous and annual withdrawal limit for the two applications and all existing rights and permits. It is recommended, but not required, that the K.G.D.T., Inc., new well be drilled into the second aquifer. The completed well log for the proposed new Highland Hills Company well is required to be submitted to the Department within 30 days of completion of the well. It is also reported by the Department--on G2-26200 only--that waters will be used for a public water supply, thus requiring certain written approvals from the State Department of Social and Health Services.

VIII

The regional intertied water system of wells, pipelines, and storage tanks would serve up to 700 homesites from a maximum of three wells operating at one time--with storage--at not to exceed 480 gallons per minute or 350 acre-feet per year. Since two water certificates and one permit (for three wells) already exist underlying the subject applications only 330 gallons per minute flow is primary and 150 gallons per minute is supplemental to existing rights. In the

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHE Nos. 83-80, et al.
PCHE Nos. 83-81, et al.

1 same fashion, 195 acre-feet per year is primary and 155 acre-feet per
2 year is supplemental to existing rights. There are plans to run a
3 water transmission line from the storage tank at the K.G.D.T., Inc.,
4 well field site to a point east of the Happy Valley Road and near the
5 west quarter corner of Section 32 where an intertie will be made to a
6 well drilled for Albert Haller, now under the ownership of Highland
7 Hills Development Company.

8 The described place of use in the Reports of Examination covers
9 significantly more area than is or would be residentially developed
10 through the ultimate 700 sites on Bell Hill and in the lowlands.

11 IX

12 It has been asserted that there is not adequate apparatus and
13 available water for appropriate fire protection for the Loma Vista and
14 Happy Valley areas now. New development on Bell Hill would add demand
15 for better fire protection and other basic services.

16 Any major residential development on Bell Hill will also bring
17 water holding and drainage systems for run-off and call to the
18 forefront water quality management for that run-off.

19 X

20 Any Conclusion of Law which is deemed a Finding of Fact is hereby
21 adopted as such.

22 From these Findings of Facts the Board comes to these

23 CONCLUSIONS OF LAW

24 I

25 The Board has jurisdiction over these persons and these matters.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB Nos. 83-80, et al.
PCHB Nos. 83-81, et al.

1 RCW 43.21B.

2 II

3 The requests for ground water withdrawal, while part of a total
4 proposal to develop homesites in Bell Hill and environs, are
5 themselves categorically exempt from the Environmental Impact
6 Statment requirements of the State Environmental Policy Act under WAC
7 197-10-170(2)(b). This section of the Code exempts both de minimis
8 ground water appropriations and construction of a distribution system
9 for that. Other requests for permits to public agencies under the
10 total proposal may not be exempt.

11 III

12 Lawful appropriations of ground water, through approval of the
13 Department, are made under statutory authority of RCW 90.03, 90.44,
14 and 90.54. The subject Reports of Examination do not cite RCW 90.54.

15 The criteria for approving a proposed withdrawal are:

- 16 a) that sufficient water is available from the source to support
17 the appropriation;
18 b) that the withdrawal will not impair existing rights;
19 c) that the withdrawal is for a beneficial use, and
20 d) that the appropriation will not be detrimental to the public
21 interest. RCW 90.03.290.

22 [See also Stempel v. Board of Water Resources, 82 Wn. 2nd 109, 115
23 (1973).]

24 III

25 There appears to be some water available by penetrating the second

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB Nos. 83-80, et al.
PCHB Nos. 83-81, et al.

1 aquifer.

2 IV

3 It is not fully clear from the evidence presented if there will be
4 an impairment of existing rights. If there is such an untested
5 possibility, regulatory guarantees favoring senior appropriators must
6 be set forth.

7 V

8 Ground water withdrawal for community domestic use is generally a
9 beneficial use. RCW 90.54.020. If human settlement is an acceptable
10 land use of an area, then the beneficial use is fully acclaimed.

11 VI

12 Such an appropriation as the proposed may or may not be
13 detrimental to the public interest, as seen in both a local and
14 statewide context. Under state law the Department has authority to
15 allocate available water among potential uses and users based on
16 securing the greatest benefit to the people of the state. RCW
17 90.54.010. Public policies on development, the cost to the public
18 treasury measured against the benefits, the actual availability of
19 water for both present and future needs, and the integrity of the
20 area's characteristic geology help determine the answers to public
21 interest questions.

22 VII

23 More vital information on ground water geology, drainage, sewage
24 disposal systems, and institutional arrangements for utilities service
25 and planned developments for the Sequim-Dungeness Valley is available

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB Nos. 83-80, et al.
PCHB Nos. 83-81, et al.

1 now¹ than in the winter and spring of 1983 when the Reports of
2 Examination on G2-26196 and G2-26200 were written. This information
3 affects both policy and technical aspects of water appropriation
4 decisions made by the Department.

5 VIII

6 Thorough investigation of complaints and use of one or more field
7 examinations to ascertain the exact place of use as well as point(s)
8 of withdrawal contemplated promotes more confidence and accuracy in
9 water appropriation Reports of Examination, particularly as water
10 supply becomes dearer and water withdrawals more competitive
11 throughout Washington State.

12 IX

13 From the evidence presented it appears the Department has not
14 utilized all the statutory authority and all the investigative and
15 regulatory tools available to issue Reports of Examination under the
16 subject applications. Further, there is information in a long-awaited
17 technical report and in new well logs which may impact any
18 recommendation the implementing agency (Department of Ecology) would
19 now make on these applications.

20 Accordingly, the Reports of Examination should be remanded to the
21 Department for supplemental investigation, of actual water
22 availability, from which source (aquifers), and the actual defined
23

24 1. For example, the E. W. Dross water resources investigation report
25 cited in Findings of Fact VI.

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB Nos. 83-80, et al.
PCHB Nos. 83-81, et al.

1 place of use. Additionally, protection of existing rights and
2 protections against overpumping of any ground water which may be
3 authorized under these applications must be carefully addressed in a
4 Report of Examination. Complete consistency between these
5 applications' Reports of Examination must result. Inventory and
6 notation of relevant aspects of the public's interest must be shown
7 such that no detriment, or impression of detriment, to that interest
8 could be construed from any recommended water appropriation. (See
9 Conclusion of Law V.) Specific Findings and Conclusions
10 above-mentioned in this decision serve as checkpoints for such
11 investigation and evaluation. It is not the function of this Board to
12 make these investigations and considerations in the first instance;
13 such is the responsibility of the Department.

14 X

15 Any Finding of Fact which is determined to be a Conclusion of Law
16 is hereby adopted as such.

17 From these Conclusions the Board enters this
18
19
20
21
22
23
24
25
26

27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCHB Nos. 83-80, et al.
PCHB Nos. 83-81, et al.

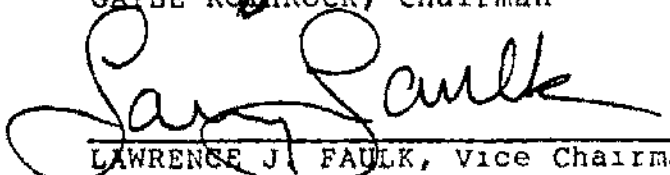
ORDER

Applications G2-26196 and G2-26200 and their Reports of Examination are remanded to the Department of Ecology for further investigation in accordance with these Findings and Conclusions.

DATED this 29th day of February, 1984.

POLLUTION CONTROL HEARINGS BOARD


GAYLE ROTHROCK, Chairman


LAWRENCE J. FAULK, Vice Chairman

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW & ORDER
PCMB Nos. 83-80, et al.
PCHD Nos. 83-81, et al.